UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
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ART UNIT	PAPER NUMBER
2145	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 November 2007*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date *01/08/2008*.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banga et al (U.S.

5,931,904) and further in view of Smith et al (U.S. 7,139,844).

As per claims 1,6,11 Banga-Smith disclosed a method of enhancing data delivery comprising:

sending a first packet from a client interface to a remote terminal at a first time; receiving at the

client interface a second packet from the remote terminal at a second time (col. 3, lines 22-36);

providing a plurality of different content versions, each is having a different amount of

information, each content version being optimized for a specific connection speed (col. 3, lines

3-15); based on said determined connection speed, automatically selecting a content version

from said plurality of content versions; and is providing the remote terminal with the selected

content version (col. 5, lines 32-47).

However Banga-Smith did not disclose, "determining a response time of the remote terminal at

the client interface based on a time period between the first time and the second time; using said

response time to determine information related to a connection speed between the remote

terminal and the client interface".

In the same field of endeavor Smith disclosed, "Alternatively the client session can periodically

issue a test message to the client and measure the period of time before a response time from the

client is received (col. 17, lines 39-43)".

It would have been obvious to one having ordinary skill in the art at the time of the invention

was made to have incorporated alternatively the client session can periodically issue a test

message to the client and measure the period of time before a response time from the client is

received as taught by Smith in the method and system of Banga-Smith to provide a data delivery

mechanism which dynamically adjusts transmission rates to the speed at which a client can

receive and process data while ensuring that updated data received by a client is current.

3.   As per claim 2 Banga-Smith disclosed further comprising determining a data flow rate

from the determined response time of the remote terminal, and wherein the determining the

response time comprises: starting a timer at the first time when the client interface sends the first

packet to the remote terminal; and stopping the timer at the second time when the client interface

receives the second acknowledgement packet from the remote terminal (Banga, col.. 6, lines 53-

66).

4.   As per claims 3,13 Banga-Smith disclosed further comprising determining network

congestion based on the determined response time (Banga, col. 4, lines 29-47).

5.   As per claims 4,14 Banga-Smith disclosed further comprising determining the response

time based on a timing of a handshake between the remote terminal and the client interface

(Banga, col. 1, lines 58-67 & col. 2, lines 1-4).

6.   As per claim 5 Banga-Smith disclosed wherein selecting the destination address from a

plurality of addresses is based on a requested address by the remote terminal and the determined

response time (Banga, col. 6, lines 53-66).

7.   As per claim 7 Banga-Smith disclosed further comprising determining a data flow rate

from the remote terminal based on the response time (Banga, col. 4, lines 29-47).

8.   As per claim 8 Banga-Smith disclosed wherein the requested destination address includes

a main destination address and a plurality of sub-addresses, each of said sub-addresses

corresponding to a connection speed and optimized for a said connection speed (Banga, col. 2,

lines 1-11).

9.   As per claim 9 Banga-Smith disclosed further comprising determining a network

congestion based on the determined response time (Banga, col. 4, lines 29-47).

10.   As per claims 10,12 Banga-Smith disclosed further comprising connecting the remote

terminal to the selected destination address (Banga, col. 5, lines 48-67).

Response to Arguments

11.   Applicant's arguments filed 11/20/2007 have been fully considered but they are not

persuasive. Response to applicants arguments are as follows.

A.   Applicant argued that prior art did not disclose, "To choose between broadcasting either

differential data or new data based on computational availability and speed at a user station or

network travel time".

As to applicant's argument regarding applicant's interpreted claim language Banga disclosed, "at

present computational speed and ability at the user station is more readily available , and cheaper

than a faster connection. Thus the invention relies on the retrieval of a cached version of a

requested page and the subsequent transmission from the remote proxy to the local proxy of only

the differences between the cached version and the current version. The user station, using its

relatively fast and cheap computational resources, reconstructs the, reconstructs the current page

from the cached version and the received different data (col. 3, lines 2-14)

B.   Applicant argued that prior art did not establish, "Prima facie case of obviousness".

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Smith taught in the method and system of Banga-Smith to provide a data delivery mechanism which dynamically adjusts transmission rates to the speed at which a client can receive and process data while ensuring that updated data received by a client is current.

Conclusion

12.   THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11.   Any inquiry concerning this communication or earlier communication from the examiner

should be directed to Adnan Mirza whose telephone number is (571)-272-3885.

12.   The examiner can normally be reached on Monday to Friday during normal business

hours. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jason Cardone can be reached on (571)-272-3933. The fax for this group is (703)-

746-7239. The fax phone number for the organization where this application or proceeding is

assigned is 571-273-8300.

13.   Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for un published

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at (866)-217-9197 (toll-free).

Adnan Mirza

/A. M. M./

Examiner, Art Unit 2145

/Jason D Cardone/
Supervisory Patent Examiner, Art Unit 2145